
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-NY-191
)	
ServisAir)	NAL/Acct. No. 200332380005
Newark, NJ)	
)	FRN: 0007-6931-53

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 13, 2002

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that ServisAir has apparently violated Section 301 of the Communications Act of 1934 ("Act"),¹ as amended, by operating a repeater station on 461.050 MHz and portable radio transmitting equipment on 466.050 MHz. We conclude that ServisAir is apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On August 12, 2002, the FCC New York Office, received a complaint of interference affecting the frequency pair 461.050/466.050 MHz, from a FCC licensed user.

3. On August 23, 2002, Commission agents, using a mobile direction finding vehicle, monitored the frequency pair 461.050/466.050 MHz. The agents determined that ServisAir located at Cargo Building 340, North Cargo Area, Newark International Airport, Newark, NJ 07114, was operating a repeater station on 461.050 MHz and portable transceivers on 466.050 MHz. There was no evidence of a Commission authorization to operate this station on frequency pair 461.050/466.050 MHz at Newark International Airport, Newark, NJ.

4. On August 26, 2002, Commission agents, using a mobile direction finding vehicle, monitored the frequency pair 461.050/466.050 MHz. The agents again determined that ServisAir was operating on the frequency pair 461.050/466.050 MHz. The agents conducted a station inspection and advised Jeff Winans, general manager of ServisAir, that the base station was operating on an unauthorized frequency pair of 461.050/466.050 MHz.

¹ 47 U.S.C. § 301.

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5. On August 27, 2002, a Commission agent again spoke to Jeff Winans, general manager, and also Brian O'Dell, vice president of ServisAir, and informed them that ServisAir, located at Newark International Airport, was operating on an unauthorized frequency pair of 461.050/466.050 MHz. The New York Office also sent a Warning Letter for unlicensed operation, by First Class and Certified Mail Return Receipt Requested, to ServisAir.

6. On August 28, 2002, Commission agents, using a mobile direction finding vehicle, monitored the frequency pair 461.050/466.050 MHz. The agents again determined that ServisAir was operating on the frequency pair 461.050/466.050 MHz.

7. On September 19, 2002, ServisAir submitted a reply to the Warning Letter, admitting using the wrong frequencies.

III. DISCUSSION

8. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. A review of Commission's records showed that there was no evidence of a Commission authorization to operate this station on frequency pair 461.050/466.050 MHz at Newark International Airport, Newark, NJ.

9. Based on the evidence before us, we find that, ServisAir, operated a repeater station on 461.050 MHz and portable radio transmitting equipment on 466.050 MHz on August 23, 2002, August 26, 2002, and August 28, 2002, in willful² and repeated³ violation of Section 301 of the Act.

10. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁴, sets the base forfeiture amount for operation without an instrument of authorization at \$10,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁵ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.

² Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

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Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a ten thousand dollar (\$10,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules⁷, ServisAir is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully violating Section 301 of the Act.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, ServisAir SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380005 and FRN: 0007-6931-53.

14. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380005.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should

⁶47 U.S.C. § 503(b).

⁷47 C.F.R. §§ 0.111, and 0.311.

⁸ See 47 C.F.R. § 1.1914.

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indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to ServisAir, 18430 Air Mail Road, Houston, TX 77032, and a copy to ServisAir, Cargo Building 340, North Cargo Area, Newark International Airport, Newark, NJ 07114.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office